

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 1:04cr37-LG-JMR-001

LEE MARVIN HARPER, JR.

**ORDER GRANTING MOTION FOR SENTENCE
REDUCTION UNDER 18 U.S.C. § 3582(c)(2)**

This cause is before the Court on motion of the Federal Public Defender [120], on behalf of the defendant, Lee Marvin Harper, Jr., and on Harper's *pro se* motion [123] for retroactive application of the sentencing guidelines for retroactive application of the sentencing guidelines to his sentence pursuant to 18 U.S.C. § 3582(c)(2) based upon recent amendments to the sentencing guidelines applicable to offenses involving cocaine base, and the subsequent decision by the United States Sentencing Commission [Sentencing Commission] to make this amendment retroactive, pursuant to United States Sentencing Guideline § 1B1.10 [USSG] effective March 3, 2008.

Harper entered a guilty plea to counts 1 and 6 of a six count indictment on September 21, 2004. (Ct. R., Doc. 60.) Harper was sentenced to term of 180 months as to count 1 of the indictment, conspiracy to possess with intent to distribute cocaine base. (Ct. R., Doc. 108, p. 2.) He received a period of supervised release of 5 years, and was assessed \$100. (*Id.*, pp. 3, 5.) According to information provided by the United States Probation Office [USPO], Harper was held accountable for 500 grams of cocaine base, which provided for a base level offense of 36. A two level enhancement was applied for possession of a weapon. Harper was granted a three level reduction for acceptance of responsibility, resulting in a total base offense level of 35. The guideline imprisonment range was 168-210 months, based on Harper's criminal history category of I. Harper was sentenced to a term of 180 months imprisonment. (Ct. R., Docs. 86, 108.)

In addition, the United States reports that Harper also received a sentencing reduction under FED.R.CRIM.P. 35 of 3 levels, with a guideline range of 121-151 months. Harper's sentence was reduced on June 5, 2007, to 130 months. (Ct. R., Doc. 106.) The United States contends that rather than sentencing Harper to the lowest guideline sentence, the Court should follow the earlier rulings, and reduce Harper's sentence accordingly. (Ct. R., Doc. 122, p. 2.)

The USPO reports that under the amended Sentencing Guidelines, the new base offense level would be 32, based on the offense and the reductions applied earlier. With the calculations of the amendments applied to this base level offense, the new offense level becomes 30, and the revised guideline imprisonment range would become 97 to 121 months.

Based on this information, the Court finds that the applicable sentence in this case should be 121 months, based on the provision sentence and pursuant to the Court's authority under 18 U.S.C. § 3582(c)(2) and Federal Rule of Criminal Procedure 43(b)(4).

IT IS THEREFORE ORDERED that the motions for change in sentence [120, 123] pursuant to 18 U.S.C. § 3582(c)(2) be and are hereby granted. It is further,

ORDERED that the Defendant Lee Marvin Harper, Jr.'s sentence be, and is hereby, reduced from 130 months to 121 months as to count 1 of the indictment. It is further,

ORDERED that all other terms and provisions of the original judgment remain unchanged and in full force and effect.

SO ORDERED AND ADJUDGED this the 26th day of August, 2008.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE